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No. 98-1391

In the Supreme Court of the United States

OCTOBER TERM, 1998

ANTONY ALEXANDER BLAREK, II, AND
FRANK V. PELLECCHIA, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the RICO conspiracy provision, 18 U.S.C. 1962(d), requires proof that a defendant agreed to personally participate in the operation or management of a criminal enterprise.

2. Whether the evidence is sufficient to show that petitioners agreed to facilitate a RICO violation by laundering the illicit proceeds of a drug-trafficking enterprise.

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OPINION BELOW

The opinion of the court of appeals (Pet. App. 1-7) is unpublished, but the decision is noted at 166 F.3d 1202 (Table).

JURISDICTION

The judgment of the court of appeals was entered on December 23, 1998. The petition for a writ of certiorari was filed on March 1, 1999. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

After a jury trial in the United States District Court for the Eastern District of New York, petitioners were

each convicted of conspiring to participate in the affairs of an enterprise through a pattern of racketeering activity, in violation of 18 U.S.C. 1962(d); and conspiring to commit money laundering, in violation of 18 U.S.C. 371 and 1956(h). In addition, Blarek was convicted of distributing the proceeds of a narcotics enterprise, in violation of 18 U.S.C. 1952(a)(1). Blarek was sentenced to 68 months' imprisonment, to be followed by a three-year term of supervised release, and fined $305,186. Pellecchia was sentenced to 48 months' imprisonment, to be followed by a three-year term of supervised release. The district court also ordered both petitioners to forfeit cash and assets. The court of appeals affirmed. Pet. App. 1-7; Gov't C.A. Br. 1-2.

1. Petitioners Blarek and Pellecchia were interior designers and decorators. In 1979, Blarek met Jose Santacruz, a leader of the Cali cocaine cartel. Santacruz hired Blarek to decorate his new home, and Blarek noted in his daily planner that he had "[m]ade the Colombian connection." In 1981, Drug Enforcement Administration agents informed Blarek that Santacruz was a drug dealer. Pet. App. 3.

Blarek became a business partner of Pellecchia, and by 1985 the two designers worked exclusively for Santacruz. During a period of several years, petitioners purchased expensive art and furniture for Santacruz's office and homes. Petitioners received the money for those purchases in the form of cash that was either wired from foreign bank accounts or delivered in duffel bags by anonymous couriers. During the course of their relationship with Santacruz, petitioners received several million dollars for their purchases on behalf of Santacruz. That money constituted the proceeds of illegal drug transactions. Pet. App. 3.

When petitioners purchased items for Santacruz, they concealed the identity of their patron from vendors. In 1986, petitioners told their accountant that they "had cash amounts, they wanted to conceal the fact that it was cash. They didn't want a money trail." The accountant then converted Santacruz's cash into checks for petitioners. Blarek filed false passport reports with the State Department and altered another passport in order to conceal the number of trips he had taken to Colombia. In 1996, after learning that Santacruz had been killed, Blarek told a government informant how petitioners would cover up their connections to Santacruz. Pet. App. 3-4.

After petitioners were arrested in 1997, their safe deposit boxes were found to contain more than $750,000 in cash. By his own admission, Blarek lied to investigators on the day of his arrest when he claimed that he never worked for Santacruz after learning in 1991 that Santacruz was a drug dealer, that there was no cash in the safe deposit boxes, and that he did not remember whether he had ever received cash payments from Santacruz for his services. The jury found petitioners guilty of RICO conspiracy, in violation of 18 U.S.C. 1962(d), and conspiring to commit money laundering, in violation of 18 U.S.C. 371 and 1956(h). Pet. App. 4.

2. The court of appeals affirmed. Pet. App. 4-7. In reviewing the sufficiency of the evidence supporting petitioners' RICO conspiracy convictions, the court applied the holding in *Salinas* v. *United States*, 522 U.S. 52, 65 (1997), that a RICO conspirator "must intend to further an endeavor which, if completed, would satisfy all of the elements of a substantive [RICO] offense, but it suffices that he adopt the goal of furthering or facilitating the criminal endeavor." Pet. App. 5. The court rejected petitioners' contention that

the evidence showed that they had not conspired with Santacruz but merely assisted him in his personal consumption. The court explained that "[t]here is considerable evidence in the record to show that [petitioners] knew Santacruz was a drug dealer and that the money they were spending for him was drug money." *Ibid.* The court added that "the size and manner of the cash transfers to [petitioners], not to mention the surreptitious conduct of [petitioners] concerning their transactions with Santacruz, could all amply support the inference that [petitioners] conspired with Santacruz to aid his enterprise's drug business through money laundering." *Ibid.*

ARGUMENT

1. Petitioners contend (Pet. 7-14) that the RICO conspiracy provision, 18 U.S.C. 1962(d), requires proof that they agreed to personally participate in the operation or management of a criminal enterprise. In making that argument, petitioners rely on *Reves* v. *Ernst & Young*, 507 U.S. 170, 183 (1993), which holds that "one is not liable under [a substantive RICO provision, 18 U.S.C. 1962(c)] unless one has participated in the operation or management of the enterprise itself."

This Court's decision in *Salinas* v. *United States*, 522 U.S. 52, 64 (1997), disposes of petitioners' contention. In that case, Salinas argued that a defendant cannot be liable for a RICO conspiracy offense, "unless he himself committed or agreed to commit the two predicate acts requisite for a substantive RICO offense under § 1962(c)." *Id.* at 61. The Court rejected that contention, holding that proof that Salinas's co-conspirator committed two predicate acts and that Salinas knew about the acts and agreed to facilitate them was sufficient to establish that Salinas violated the RICO

conspiracy provision. *Id.* at 65-66. In reaching that conclusion, the Court relied on "well-established principles" of conspiracy law. *Id.* at 63. In particular, the Court explained that, under general conspiracy law principles, "[i]f conspirators have a plan which calls for some conspirators to perpetrate the crime and others to provide support, the supporters are as guilty as the perpetrators." *Id.* at 64. The Court added that "[a] conspirator must intend to further an endeavor which, if completed, would satisfy all of the elements of a substantive criminal offense, but it suffices that he adopt the goal of furthering or facilitating the criminal endeavor." *Id.* at 65.

The well-established conspiracy law principles on which the Court relied in *Salinas* are equally applicable to RICO's "operation or management" requirement. In order to establish that petitioners violated the RICO conspiracy provision, it is not necessary to show that petitioners agreed to operate or manage a criminal enterprise themselves. Instead, it is sufficient to show that petitioners agreed to facilitate a co-conspirator's operation or management of such an enterprise. Consistent with that analysis, four courts of appeals have held that a defendant may be convicted of a RICO conspiracy without proof that he agreed to operate or manage the criminal enterprise himself. *United States* v. *Viola*, 35 F.3d 37, 42-43 (2d Cir. 1994), cert. denied, 513 U.S. 1198 (1995); *United States* v. *Posada-Rios*, 158 F.3d 832, 857 (5th Cir. 1998), cert. denied, 119 S. Ct. 1280 (1999); *United States* v. *Quintanilla*, 2 F.3d 1469, 1484-1485 (7th Cir. 1993); *United States* v. *Starrett*, 55 F.3d 1525, 1547 (11th Cir. 1995), cert. denied, 517 U.S. 1111 (1996).

As petitioners note (Pet. 10-12), the Third and Ninth Circuits have held that the RICO conspiracy provision

requires proof that the defendant agreed to personally participate in the operation or management of the enterprise. *United States* v. *Antar*, 53 F.3d 568, 581 (3d Cir. 1995); *Neibel* v. *Trans World Assurance Co.*, 108 F.3d 1123, 1128 (9th Cir. 1997). *Antar* and *Neibel*, however, were both decided before this Court's decision in *Salinas*, and the Third and Ninth Circuits have not yet evaluated the impact of *Salinas* on those decisions. The Third Circuit granted rehearing en banc in *Klein* v. *Boyd*, No. 97-1143, 1998 WL 55245 (March 9, 1998), to reconsider *Antar* in light of *Salinas*, but the case was settled and the suit was dismissed before the en banc court issued a decision. The Ninth Circuit has a case pending before it in which the United States is arguing that *Neibel* is inconsistent with *Salinas* and therefore should no longer be followed. See U.S. Br. at 27-37, *United States* v. *Luong*, No. 99-10009 (filed Feb. 8, 1999). Because *Salinas* makes clear that the RICO conspiracy provision does not require proof that the defendant agreed to personally operate or manage a criminal enterprise, and because there is no post-*Salinas* conflict on that issue, this Court's review of that question is not warranted.

2. Petitioners alternatively contend (Pet. 14-15) that the RICO statute does not make it illegal to provide the leader of a drug trafficking enterprise with expensive goods and services for his personal consumption. Petitioners, however, did not simply facilitate Santacruz's enjoyment of a lavish lifestyle. As the court of appeals explained (Pet. App. 5), the evidence in this case establishes that petitioners aided Santacruz's drug business by laundering large sums of drug money. Money laundering is an integral component of a drug trafficking enterprise. See *United States* v. *Coiro*, 922 F.2d 1008, 1017 (2d Cir.), cert. denied, 501 U.S. 1217 (1991); *United*

States v. *Barns*, 604 F.2d 121, 154-155 (2d Cir. 1979), cert. denied, 446 U.S. 907 (1980).

Petitioners argue (Pet. 15-16) that the government did not rely on a money laundering theory at trial. Allegations in the indictment, however, clearly set forth the government's theory that petitioners advanced the RICO enterprise by engaging in money laundering (Intro., ¶¶ 13-16; Count 1, ¶¶ 19-20). And, in its closing argument, the government repeatedly emphasized that petitioners' participation in the enterprise consisted of acts of money laundering. See, *e.g.*, Tr. 1722 ("these defendants designed a scheme with Santacruz to conceal, to wash, to clean part of his drug fortune"); Tr. 1723 ("What this case is really about is how these defendants and Santacruz conspired and acted to conceal and disguise the true source and ownership of millions of dollars of merchandise sent to Colombia for Santacruz' use and benefit."); Tr. 1726 ("The evidence submitted during this trial concerns * * * how [the defendants] managed the area of purchasing and concealment of drug money.").

Petitioners claim (Pet. 16-17) that most of the money delivered to them by Santacruz had already been laundered, and that Santacruz had an elaborate apparatus, not involving petitioners, to launder the cash generated by his drug trafficking. To the extent the money received by petitioners had already been laundered, however, Santacruz needed to convert the money into a form in which he could use it. Petitioners, knowing that the wire transfers consisted of the proceeds of illegal drug trafficking, provided Santacruz with a means to do so. And, while petitioners laundered only a fraction of Santacruz's enormous drug profits, the fact remains that they laundered millions of dollars for him.

Petitioners finally argue (Pet. 17 & n. 11) that their acquittal on the substantive RICO count suggests that the jury found that they did not engage in money laundering. That acquittal, however, could have been based on any number of grounds, including the jury's decision to exercise leniency. See *United States* v. *Powell*, 469 U.S. 57, 65 (1984). It therefore provides no basis for petitioners' contention that the jury found insufficient evidence of money laundering. Significantly, the jury found petitioners guilty of conspiring to engage in money laundering, verdicts that are entirely consistent with the jury's finding that petitioners conspired to violate RICO by laundering Santacruz's drug proceeds.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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